IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.4587 OF 2003 (O&M)

Date of Decision : 05.10.2007

Parkash and others .....Appellants

versus

Jaswant and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr. Ashok Aggarwal, Senior Advocate with
Mr. Vikram Aggarwal, Advocate for the appellants.

Mr.V.K.Jain, Senior Advocate with
Mr.Sachin Mittal, Advocate for the respondents.

Mr.R.K.Jain, Advocate for applicant-respondent Nos.17 to 27.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

Some of the defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration challenging the decree suffered by Hari Singh for and on behalf of his sons in favour of Chalti Devi on 1.9.1984, was decreed.

The plaintiffs are the sons of Hari Singh out of his wedlock with Smt.Phool Bai, plaintiff No.5. The plaintiff Nos.1 ro 4 were owners in possession of the land measuring 72 kanals 5 marlas situated in revenue estate of village Lohchabka, Tehsil Pataudi, District Gurgaon on the basis of Will executed by Brij Kumar. The defendant No.1 Hari Singh i.e. their father, suffered a decree in favour of defendant No.2 Chalti Devi, his second wife, on 1.9.1984. The said decree was challenged in the present suit being illegal, invalid, void and without jurisdiction inter alia on the

grounds that no notice or summon was ever served upon the plaintiff Nos.1 to 4; they never appeared in the Court and they never authorized Hari Singh, defendant No.1, to give any statement on their behalf. The decree was also challenged on the ground that plaintiff No.1 to 3 were minors in the year 1984 and in fact, the plaintiff No.4 was stated to be minor even on the date of filing of the suit. It is also pointed out that the mandatory provisions of Order 32 Rule 7 of the Code of Civil Procedure were not complied with and no application for appointment of defendant No.1 as guardian of the minor plaintiffs was ever filed and, thus, the decree is nullity. Still further it is pointed out that there is no compliance of the provisions of Order 23, Rule 3 of the C.P.C. It is also pointed out that after the decree was suffered in favour of Chalti Devi, she has executed numerous sale deeds in favour of other defendants which are illegal and null & void.

The defendant Nos.1 & 2 filed a joint written statement and alleged that the plaintiffs have refused to serve them in their old age. Defendant Nos.1 & 2 have never played any fraud. Since the plaintiffs have refused to serve the defendants Nos.1 & 2 in their old age and as such they obtained a decree and sold the land to the remaining defendants for their livelihood. It was also pointed out that the land is ancestral. The defendant Nos.1 & 2 were having no property for their livelihood and, therefore, they obtained a decree in favour of defendant No.2 and sold the land for their own benefits.

Defendant Nos.8 to 12 denied the ownership of the plaintiffs over the suit property and alleged that the suit has been filed collusively between the plaintiffs and the defendants. It was pleaded that defendant No.2 has entered into an agreement to sell the property and that the said

defendants are the bonafide purchasers having entered into an agreement to sell after verifying their title in the land in question from the revenue record. Similar is the written statement filed on behalf of other defendants.

The learned trial Court after recording the evidence, returned a finding that the judgment and decree dated 1.9.1984, Exhibit PX and PY are illegal, invalid and without jurisdiction as it is not disputed that some of the plaintiffs were minor at the time of passing of the impugned decree and no prior permission or leave of the Court was obtained. Even if it was presumed that the plaintiffs were major at the time of filing of the suit, it was the duty of Chalti Devi to issue summons against the major persons. From the perusal of the original suit tiled as *Smt.Chalti versus Jaswant and others",* it was found that only Hari Singh was summoned on behalf of the plaintiffs and no separate notices were issued to each of the plaintiffs in the case and Hari Singh admitted the claim of Chalti Devi in toto. Thus, a finding was returned that the decree was obtained by Chalti Devi by playing fraud and on account of gross negligence on the part of Hari Singh who is natural guardian of the plaintiffs.

In respect of Issue No.10 regarding defendants are the bonafide purchasers, the Court found that since the vendor of the said defendants have no title in the suit property, therefore, the said defendants cannot be held to be bonafide purchasers. Such finding of the learned trial Court was affirmed in first appeal as well.

From the facts on record, it is transpired that plaintiff Nos.1 to 4 were recorded as owners of the suit property. The said plaintiffs inherited the property by virtue of Will dated 6.1.1975 executed by Kuria, father of Hari Singh in their favour. Hari Singh suffered a decree in favour of Chalti

Devi on 1.9.1984, though the plaintiffs were minor at that time. Even no application for permission to sue such plaintiff s as Guardian of the minors was moved and thus, Hari Singh could not suffer any statement acting as natural guardian on behalf of the minors in the said suit. Reliance may be placed on a Division Bench judgment of this Court, ***"Gurpreet Singh versus Chatterbhuj Goel, AIR 1992 Punjab & Haryana-95"*** . Even if the plaintiffs were major, still no decree could be suffered by Hari Singh in the absence of any authority on their behalf in favour of Hari Singh and appear in the suit or to compromise the same. Thus, the findings recorded by the Courts below that the decree could not be suffered by Hari Singh in respect of the property of the plaintiffs, cannot be said to be suffering from any patent illegality or irregularity.

Since Chalti Devi had no title on the basis of the decree dated 1.9.1984, therefore, the appellants cannot be said to be bonafide purchasers. The plea of bonafide purchasers is available against a person who is ostensible owner and not against a person who has no right, title or interest in the suit land.

I do not find any illegality or irregularity in the finding recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, the present appeal is dismissed.

05-10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**